

Serial No.: 09/989,845
Art Unit: 3679

REMARKS

Claims 1-5, 7-12, 14-16, 18-20, 22, and 24 are in the case.

The Claims have been amended to comply with the Examiner's suggestions. Claims 4, 11, 22, and 24 have been amended to correct certain informalities in accordance with the Examiner's suggestions. Claims 4, 11, and 22 have been amended to more particularly point out and distinctly claim that which Applicant regards as his invention to recite channel. Claims 4 and 11 have been amended to more particularly point out and distinctly claim that which Applicant regards as his invention to recite said ... railing. Claim 24 has been amended to recite proper dependency.

Claim 21 has been cancelled in compliance with the Examiner's restriction requirement, withdrawing without prejudice Claim 21 from further consideration in the present case.

Claims 1, 8, and 18 have been amended to more particularly point out and distinctly claim that which Applicant regards as his invention to recite a variably select post position along said longitudinally extending railing. Support for the Amendment is found in Applicant's specification as originally filed at page 9, lines 5-17.

Claims Objection

Claims 4, 11, 22, and 24 stand objected to for certain informalities identified specifically and recited in the Office Action.

Serial No.: 09/989,845
Art Unit: 3679

The Examiner takes the position regarding Claims 4 and 11, that the limitation "each...railing" in line 1 lacks proper antecedent basis as at least two or more extending railings have not been previously recited in Claim 1, and "slot" should -
-channel--.

The Examiner takes the position regarding Claim 22, the limitation "slot" in line 2 should be --channel--; and, regarding Claim 24, this claim depends from a cancelled Claim.

Claims 4, 11, 22, and 24 have been amended in accordance with the Examiner's suggestions and to comply with the Examiner's suggestions, and the objection is believed to have been overcome and is respectfully requested to be withdrawn.

35 USC §112

Claims 1-5, 7-12, 14-16, 18-20, 22, and 24 stand rejected under 35 U.S.C. 112, first paragraph, based on the statutory enablement requirement.

The Examiner has taken the position that it is unclear what feature of the invention allows one of ordinary skill in the art to provide a "variably selection elevation" of the railing when the fastening means is slidably embraced within the T-shaped channel and extending through the perforation in the flange segment as recited in lines 14-16 of Claim 1, lines 13-14, of Claim 8, and in lines 14-15 of Claim 18. The Examiner views the railings as "only adjusted horizontally to a ground when the

Serial No.: 09/989,845
Art Unit: 3679

fastening means (the bolt) is loosen." Thereafter, the railing is fixed to the posts.

Claims 1, 8, and 18 have been amended to more particularly point out and distinctly claim that which Applicant regards as his invention to delete elevation and to recite post position along the railing.

For customization, the location of the vertical posts along the railing of the present invention is provided by the use of the T-shaped channels of the present invention having inwardly facing legs or inwardly facing tabs in that the head of a bolt, nut, or such other fastening means is slidably retained within the T-slot channel. The present invention as claimed, as amended, provides means for the vertical posts to be installed intermediately at variable distances from the ends of the railing depending upon the desired railing support required, or the variably positioned post may be positioned at the ends of the railing. When the vertical posts are positioned at the ends of the railing, two railings may be joined to a single vertical post by fastening an end of that railing to one flange segment and an end of another railing to the opposite and outwardly extending flange segment as shown and described in Applicant's specification description and as shown in the figures of the drawings.

For the foregoing reasons, the rejection of Claims 1-5, 7-12, 14-16, 18-20, 22, and 24 under 35 U.S.C. 112, first paragraph, is believed to have been overcome by the amendments to the

Serial No.: 09/989,845
Art Unit: 3679

Claims, and the rejection is respectfully requested to be withdrawn.

Claims 8-12 and 14-16 stand further rejected under 35 U.S.C. 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as his invention.

Regarding Claim 8, the Examiner has taken the position that the limitation "variably select" is unclear as to the metes and bounds as to what constitutes "variably select" when associated with the elevation of the railing as shown in the figures. The Examiner has taken the position that the drawings only show each railing fixed at predetermined heights which are not variable in elevation but rather in a longitudinal direction.

Claims 1, 8, and 18 have been amended to more particularly point out and distinctly claim that which Applicant regards as his invention to delete elevation and to recite a variably select post position along said longitudinally extending railing. Support for the Amendment is found in Applicant's specification as originally filed at page 9, lines 5-17.

For the foregoing reasons, the rejection of Claims 8-12 and 14-16 under 35 U.S.C. 112, second paragraph, is believed to have been overcome by the amendments to the Claims, and the rejection is respectfully requested to be withdrawn.

Serial No.: 09/989,845
Art Unit: 3679

35 USC § 102

Claims 1-3, 8-10, and 18-20 stand rejected under 35 U.S.C. 102(b) as anticipated by Case U.S. Patent No. 3,388,892 (hereinafter "Case").

Case discloses a screened highway safety rail having wire fabric.

Applicant's invention as claimed as amended requires a longitudinally extending railing having a novel longitudinal T-shaped channel and vertical flange and perforation rail combination apparatus and method which are nowhere taught or suggested in Case.

A specialized T-shaped channel and vertical flange and perforation apparatus and method as claimed are important for customizing barriers of different lengths without cutting the rails to form in the field, and without drilling positioning holes or perforations in the railings or fastening the rails to the vertical posts with bolts.

The Case reference discloses a screen extension to existing bridge railings. The Case reference teaches above-the-rail as well as inter-rail screening.

The Examiner refers to Case top rail 82 and line posts 56 and bolts 42c.

Case does not teach or suggest the T-shaped channel apparatus and method as required in Applicant's Claims, as

Serial No.: 09/989,845
Art Unit: 3679

amended, because only the upper ends of line posts 56 are fastened by bolts 42c in Case.

The Case line posts 56 are fastened at the lower ends by bolts 60 to post 14.

Applicant's invention as claimed, as amended, on the other hand, requires and provides for a variably select post position along the longitudinally extending safety barrier.

One of the problems of customizing barriers within industrial facilities and consumer businesses, e.g., factory floors or hardware stores, for example, is that barriers of different lengths and having a non-uniformity of distances between vertical support posts are desired. Installation has been found to require cutting the rails to form, drilling positioning holes or perforations in the railings, and then fastening the rails to the vertical posts with bolts and the like. This on-site fabrication process is time consuming, burdensome, and adds greatly to installation costs.

The apparatus and method of Applicant's invention as claimed, as amended, provide for a positioning of barrier railings to overcome the problem of the difficult construction of a fence having a desired non-uniformity of post position of the vertical support posts, as the support post connects to the railing, and as such provide for a variably select post position along the longitudinally extending railing.

Serial No.: 09/989,845
Art Unit: 3679

Applicant's invention as claimed provides a customized longitudinal railing having a novel specialized channel in combination with vertically extending posts having specialized flange segments and specialized perforations so that fastening means slidably embraced within the T-shaped channel and extending through the perforation in the flange segment and thereby fastened to the vertical post provide a variably select post position along the longitudinally extending railing, which combination is nowhere taught or suggested in the Case reference cited as the basis for rejection.

For the foregoing reasons, the rejections of Claims 1-3, 8-10, and 18-20 under 35 U.S.C. 102(b) as anticipated by Case U.S. Patent No. 3,388,892 is based on an insufficient reference and is respectfully requested to be withdrawn.

35 USC § 103

Claims 1-2, 4, 5, 7-9, 11, 12, 14-18, 19, 22, and 24 stand rejected under 35 U.S.C. 103(a) as unpatentable over McMullin U.S. Patent No. 3,258,250 (hereinafter "McMullin") in view of Case U.S. Patent No. 3,388,892 (hereinafter "Case").

McMullin discloses reinforcing a bridge rail.

McMullin supplies none of the deficiencies of disclosure found in respect to the Case reference as described in detail herein above.

Serial No.: 09/989,845
Art Unit: 3679

The Examiner refers to the McMullin rail 37, support post 11, and bolt 34.

The McMullin support posts 11 do not provide the specialized flange segments and specialized perforations as required in Applicant's invention as claimed, as amended, to provide a variably select post position along the longitudinally extending railing.

McMullin specifically recites that "the support post can comprise any suitable structure and be formed in any suitable manner." (McMullin Col. 1, lines 65-66)

The McMullin rail 37 combines with a reinforcing member 38 adapted to be longitudinally interlocked to the rail 37. The reinforcing member 38 is positioned with a second reinforcing member 39 after reinforcing member 39 is positioned behind reinforcing member 38, and bolt 34 causes reinforcing member 39 to be drawn toward reinforcing member 38 to clamp and hold rail 37 from longitudinal movement and provide a reinforced bridge structure.

The Examiner admits that McMullin does not show another perforation in the other one of flange segments thereby making each of the flange segments having at least one perforation to connect the rail.

The Examiner cites Case to teach a perforation in each flange segment.

Serial No.: 09/989,845
Art Unit: 3679

There is no motivation to combine the McMullin and Case references. McMullin discloses reinforcing a bridge and H-shaped support posts structure, and Case discloses a screen extension. McMullin relates to bridge rails, and Case relates to wire fabric. One would not have combined the McMullin and Case references except on the basis of reconstructive hindsight after having had the benefit of Applicant's disclosure.

Assuming, but not granting or admitting, that one would have combined the McMullin and Case references, one would have formed a solid structure not providing the specialized flange segments and specialized perforations as required in Applicant's invention as claimed, as amended, to provide a variably select post position along the longitudinally extending railing.

The Case slot 71 is used to fasten the upper ends of line posts 56. The Case slots 71 are not perforations adapted to combine in vertically extending posts with flange segments in the vertically extending post to provide a variably select post position along the longitudinally extending railing as required in Applicant's claims, as amended.

Case discloses a screened highway safety rail having wire fabric. Applicant's invention as claimed, as amended, requires a longitudinally extending railing having a novel T-shaped channel and vertical flange with perforated apparatus and method which are nowhere taught or suggested in Case. The novel T-shaped

Serial No.: 09/989,845
Art Unit: 3679

channel and vertical flange with perforations apparatus and method are important for customizing barriers of different lengths and configuration without cutting the rails to form, and without drilling positioning holes or perforations in the railings or fastening the rails to the vertical posts with bolts and the like.

Case discloses a screen extension to existing bridge railings. Case provides above-the-rail as well as inter-rail screening. The Examiner references Case top rail 82 and line posts 56 and bolts 42c. Case does not teach or suggest T-shaped channel as required in Applicant's claims, as amended, because only the upper ends of line posts 56 are fastened by bolts 42c. The Case line posts 56 are fastened at the lower ends by bolts 60 to post 14.

Applicant's invention as claimed, as amended, on the other hand, provides for a variably select post position along the longitudinally extending safety barrier.

Applicant's invention as claimed, as amended, overcomes the problems of customizing barriers within industrial facilities and consumer businesses when barriers of different lengths and non-uniformity of distances between vertical support posts are found to require cutting the rails to form, drilling positioning holes or perforations in the railings, and then fastening the rails to the vertical posts with bolts and the like. Applicant's invention as claimed, as amended, overcomes the problem

Serial No.: 09/989,845
Art Unit: 3679

previously experienced in on-site fabrication processes which were hindersome, time consuming, and added greatly to installation costs. The apparatus and method of the present invention provide for a positioning of barrier railings to overcome the problem of the non-uniformity of position of the vertical support posts, as the support post connects to the railing, and provide for a variably select post position along the longitudinally extending railing of Applicant's invention as claimed.

Applicant's invention as claimed provides a customized combination apparatus of longitudinal railing having a novel specialized channel in combination with vertically extending posts having specialized flange segments and specialized perforations so that fastening means are slidably embraced within the T-shaped channel, extend through the perforation in the flange segments, and thereby are fastened to the vertical post to provide a variably select post position along the longitudinally extending railing, which combination is nowhere taught or suggested in the Case or McMullin references cited as the basis for rejection.

For the foregoing reasons, the rejections of Claims 1-2, 4, 5, 7-9, 11, 12, 14-18, 19, 22, and 24 under 35 U.S.C. 103(a) as unpatentable over McMullin U.S. Patent No. 3,258,250 (hereinafter "McMullin") in view of Case U.S. Patent No. 3,388,892 is based on

Serial No.: 09/989,845
Art Unit: 3679

an improper combination of insufficient references and is respectfully requested to be withdrawn.

The prior art made of record has been reviewed and is not believed to be the basis for a prior art rejection of Applicant's invention as claimed, as amended.

Formal acceptance of the drawings, subsequent to the instant amendments of the Claims, is earnestly solicited.

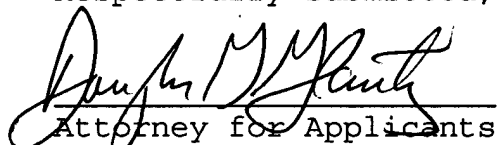
Reconsideration of this Application is requested.

September 16, 2004

Douglas G. Glantz
Attorney At Law
5260 Deborah Court
Doylestown, PA 18901-1949

Voice: (215) 794-9775
Fax: (215) 794-8860
DGG/mnr

Respectfully submitted,



Attorney for Applicants
Reg. No. 29,640